No. 123972

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- WILLIAM COTY Defendant-Appellee	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-16-2383. There on appeal from the Circuit Court of Cook County, Illinois , No. 04 CR 30062. Honorable Nicholas Ford, Judge Presiding.

APPELLEE'S REPLY IN SUPPORT OF REQUEST FOR CROSS-RELIEF

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REPLY BRIEF FOR DEFENDANT-APPELLEE

I. William Coty's sentence violates the federal and state constitutions because the trial court did not consider Coty's intellectual disability and its attendant characteristics or the circumstances of the offense before imposing a discretionary *de facto* life sentence.

A. Coty's sentence violates the eighth amendment.

The State maintains that mandatory lifetime imprisonment for intellectually disabled adults does not shock the moral sense of the community because there is no national consensus against this sentencing practice and it serves legitimate penological goals. (St. Resp. Br. 10) To be clear, the sentence at issue here was not a mandatory life sentence, but rather a discretionary *de facto* life sentence. Coty was initially sentenced to a mandatory term of natural life in prison under 720 ILCS 5/12-14.1(b)(2) (West 2004), but the first district appellate court agreed that this sentence violated the proportionate penalties clause of the Illinois Constitution as applied to Coty in light of his intellectual disability and the circumstances of the offense. *People v. Coty*, 2014 IL App (1st) 12-1799-U, ¶77. The State did not ask this Court to review that decision. Upon remand, the re-sentencing court sentenced Coty to 50 years. Coty is asking this Court to hold that this 50-year sentence violates the eighth amendment of the federal Constitution because the re-sentencing court imposed this discretionary *de facto* life sentence on Coty without first considering his intellectual disability and its attendant characteristics or the circumstances of the offense. (Appellee's Open. Br. 10)

1. A rule requiring a sentencer to consider an offender's intellectual disability and its attendant characteristics before imposing a life sentence flows straightforwardly from eighth amendment precedent.

According to the State, "[t]he lack of a national consensus dooms any finding

that life imprisonment for intellectually disabled adults shocks the moral sense of community." (St. Response Br. 10) This argument should be rejected because it is based on a misinterpretation of *Miller v. Alabama*, 567 U.S. 460, 483 (2012). Specifically, this argument requires this Court to find that *Miller* categorically bars a penalty for a class of offenders or type of crime. (St. Br. 10-12) The problem with this argument is the *Miller* Court explicitly held that its decision "does not categorically bar a penalty for a class of offenders or type of crime." *Id.* at 484. And just as in *Miller*, Coty is not asking this Court to categorically bar a penalty for a class of offenders or type of crime. *Id.* Instead, just as in *Miller*, Coty is asking this Court to "mandate[] only that a sentencer follow a certain process" – considering an offender's intellectual disability and its attendant characteristics – before imposing a particular penalty. *Id.* And according to *Miller*, the analysis of whether the eighth amendment mandates such a process does not require this Court to consider whether objective indicia of society's standards, as expressed in legislative enactments and state practice, show a national consensus against a certain sentencing practice. *Id.*

This is true notwithstanding the United States Supreme Court's decision in *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016). In *Montgomery*, the Court held that *Miller* announced a substantive rule of constitutional law and therefore applies retroactively to cases on collateral review. *Id.* In so holding, *Montgomery* clarified that *Miller* established both a substantive and a procedural requirement, *see People v. Buffer*, 2019 IL 122327, ¶24, where *Miller* "rendered life without parole an unconstitutional penalty for 'a class of defendants because of their status' –that is, juvenile offenders whose crimes reflect the transient immaturity of youth."

Montgomery, 136 S. Ct. at 734, *quoting Penry v. Lynaugh*, 492 U.S. 302, 330 (1989).

Based on *Montgomery*, the State insists that "*Miller does* categorically prohibit a penalty," such that objective indicia are necessary for this Court to hold that the eighth amendment requires a sentencer to follow a certain process before sentencing an intellectually disabled defendant to die in prison. (St. Response Br. 11) (emphasis in original). But *Montgomery* itself made clear that *Miller* "did not bar a punishment for all juvenile offenders," as the Court did in *Roper v. Simmons,* 543 U.S. 551 (2005) or *Graham v. Florida,* 560 U.S. 48 (2010). *Montgomery*, 136 S. Ct. at 734. The United States Supreme Court has therefore unequivocally repeated that "[*Miller*] *does not* categorically bar a penalty for a class of offenders or type of crime. *Miller*, 567 U.S. at 483 (emphasis added)*; see also Montgomery*, 136 S. Ct. at 734. And after *Montgomery*, this Court has repeatedly recognized that "[*Miller's*] holding was not a categorical prohibition of life-without-parole sentences for juvenile murderers." *People v. Reyes*, 2016 IL 119271, ¶4; *see also People v. Holman*, 2017 IL 120655, ¶51 (refusing to adopt "a categorical ban on life sentences for juveniles," where the United States Supreme Court has so far declared that such sentences may be constitutional provided the trial court complies with *Miller*). As such, all of the State's arguments that are predicated on its misinterpretation of *Miller* – that *Miller* categorically bans a certain sentence on a class of offenders – must fail.

To be sure, Coty is not suggesting "that objective indicia of societal standards are *irrelevant* in determining whether a sentencing practice is cruel and unusual," as the State suggests. (St. Response Br. 11) (emphasis added); *see e.g., Reyes*, 2016 IL 119271, ¶9; *People v. Harris*, 2018 IL 121932, ¶61. However, a lack of objective

indicia certainly does not "doom[]" a finding that the instant sentence is unconstitutional. (St. Response Br. 11-12); *Miller*, 567 U.S. at 483. Indeed, as the State acknowledges, *Miller* rejected the argument that because 29 jurisdictions made a life without parole term mandatory for some juveniles convicted of murder in adult court, the Supreme Court could not find the sentencing practice cruel and unusual. (St. Response Br. 11), citing *Miller*, 567 U.S. at 482. *Miller* noted that more than half did so by virtue of generally applicable penalty provisions, imposing the sentence without regard to age. *Id.* at 486. *Miller* thus explained that "simply counting [statutes] would present a distorted view," where "it was impossible to say whether a legislature had endorsed a given penalty for children (or would do so if presented with the choice)." *Miller*, 567 U.S. at 485. Accordingly, the "statutory eligibility of a juvenile offender for life without parole [did] not indicate that the penalty [had] been endorsed through deliberate, express, and full legislative consideration," such that "these possibly (or probably) inadvertent legislative outcomes [did] not preclude [a] determination that mandatory life without parole for juveniles violates the Eighth Amendment." *Id.* at 486-87, *citing Graham*, 560 U.S. at 67.

The *Miller* Court's discussion of the objective indicia offered by the States in that case only illustrates why the objective indicia did not guide its analysis. *Miller*, 567 U.S. at 482-87. Likewise, the State's argument that "the lack of such evidence here precludes any finding that the sentence is cruel or degrading" should be rejected for similar reasons. (St. Br. 12) Even if there are no jurisdictions prohibiting mandatory life without parole for intellectually disabled adults, it is impossible to say whether this penalty has been endorsed though full legislative

consideration. And very few courts across the country have actually addressed this issue, probably because it is incumbent on intellectually disabled defendants, who most likely cannot read or write, to collaterally attack their life sentences in *pro se* petitions, as Coty did here.[1] Accordingly, nothing precludes this Court from holding that intellectually disabled defendants are entitled to the same procedural safeguards as juveniles, regardless of whether a national consensus exists banning the sentencing practice at issue here. *Miller*, 567 U.S. at 487; *see also Graham*, 560 U.S. at 61 (Courts must determine in the exercise of their own independent judgment whether the punishment in question violates the Constitution.)

This Court should likewise reject the State's argument that "[m]andatory life imprisonment for intellectually disabled adults may serve legitimate penological goals." (St. Response Br. 12) The State does not dispute that juveniles and intellectually disabled defendants are indistinguishable from one another in regards to their diminished personal culpability. (St. Response Br. 15) Nor does the State dispute that both *Atkins v. Virginia,* 536 U.S. 304 (2002) and *Miller* determined that due to juveniles' and intellectually disabled defendants' diminished culpability, neither the penological goal of retribution nor the goal of deterrence is served by the imposition of extreme sanctions such as the one at bar. (Appellee's Open. Br. 21-22); (St. Response Br. 15)

The State's primary argument is that "the central premise of the Supreme Court's juvenile sentencing jurisprudence – that 'children are different' due to

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[1]Coty presumably received assistance from a prison law clerk or fellow inmate in drafting his 2-1401 petition because he cannot read or write. (Tr. C. 79)

their 'diminished culpability *and* heightened capacity for change' – does not apply to intellectually disabled adult offenders." (St. Response Br. 12) (emphasis in original), quoting *Miller*, 567 U.S. at 479-80. The State notes that it is because "children have 'greater prospects for reform' that the [penological] goals of incapacitation and rehabilitation do not justify imprisoning them for life." (St. Response Br. 13-14), quoting *Miller*, 567 U.S. at 471. The State asserts that an intellectually disabled individual's deficiencies are "unlikely to change with time and ordinary intellectual, neurological, and psychosocial development." (St. Response Br. 14) Thus, the State posits that given "the fixed nature of an intellectually disabled person's deficits and the attendant diminished prospects for rehabilitation," it is neither cruel nor unusual to sentence an intellectually disabled defendant to die in prison without first considering those deficits. (St. Response Br. 14-16)

For the reasons explained in the opening brief, the penological goals of incapacitation and rehabilitation do not by themselves justify a life sentence for an intellectually disabled offender. (Appellee's Open. Br. 21-24) As to incapacitation, the State argues that "*Atkins* emphasized that intellectual disability 'do[es] not warrant an exemption from criminal sanctions' and, unlike youth, can be an indicator of future dangerousness." (St. Response Br. 15), *quoting Atkins*, 536 U.S. at 306, 318, 321; *Johnson v. Texas*, 509 U.S. 350, 368-69 (1993). But as *Atkins* itself stated, "[t]here is no evidence that [intellectually disabled defendants] are more likely to engage in criminal conduct than others." *Atkins*, 536 U.S. at 318. And as noted in the opening brief, Coty agrees that he, or any other intellectually disabled defendant, is not exempt from criminal sanctions. (Appellee's Open. Br. 22)

Furthermore, Coty is not asking this Court to entirely foreclose a sentencer's ability to impose a lengthy sentence, or even a life sentence, on intellectually disabled defendants. (Appellee's Open. Br. 22) All he is asking is for this Court to mandate that a sentencer consider how an intellectually disabled defendant is indisputably different from a non-disabled defendant before imposing such a sentence.

And even if an intellectually disabled person has "diminished prospects for rehabilitation" compared to juveniles, (St. Response Br. 15), this is not a compelling reason to hold that *Miller's* rationale should not be extended to intellectually disabled adults. The State emphasizes that "[i]ncapacitation does not support life sentences for juveniles because '[d]eciding that a juvenile offender forever will be a danger to society would require making a judgment that he is incorrigible–*but incorrigibility is inconsistent with youth*.'" (St. Response Br. 13) (emphasis in original), *quoting Miller*, 567 U.S. at 472-73 (*citing Graham*, 560 U.S. at 72-73). While this is certainly true, this does not mean that incorrigibility is consistent with intellectual disability. Rather, research shows that offenders with an intellectual disability *are* capable of change and can be rehabilitated, regardless of the static nature of their disabilities. (Appellee's Open. Br. 36-37), citing Frank Lambrick & William Glaser, *Sex Offenders With an Intellectual Disability*, Sexual Abuse: A Journal of Research and Treatment, Vol. 16, No. 4.

Furthermore, while an intellectually disabled defendant's rehabilitative potential may not be as great as a juvenile's, a "juvenile defendant's prospects for rehabilitation" is just one of five factors that this Court has stated a trial court must consider before determining whether, under *Miller,* a juvenile may be sentenced to life in prison. *Holman*, 2017 IL 120655, ¶ 46, *citing Miller*, 567 U.S. at 477-78.

The other four factors relate to the juvenile's youth and mitigated culpability, and would therefore equally apply to intellectually disabled defendants.[2] As such, the difference in rehabilitative potential between a juvenile and an intellectually disabled adult should not preclude this Court from extending *Miller* to intellectually disabled adults. (Appellee's Open. Br. 23-24)

The State notes that Coty "cites no case extending *Atkins* to noncapital sentences or *Miller* to the intellectually disabled," and "every court in the country to have addressed the issue has declined to do so." (St. Response Br. 15-16) The State is incorrect: the first district appellate court in this case extended *Miller* to the intellectually disabled. In 2014, the appellate court first agreed that Coty's mandatory life sentence was unconstitutional as applied to him in light of his intellectual disability, and the State chose not to ask this Court to review that decision. *Coty*, 2014 IL App (1st) 12-1799-U, ¶77. In 2018, the appellate court explicitly held that a sentencer must consider an offender's intellectual disability before imposing a life sentence. *People v. Coty*, 2018 IL App (1st) 162383, ¶84. The appellate court's two decisions finding Coty's life sentence unconstitutional were well-reasoned and supported by the precedent of both the United States Supreme Court and this Court. For the reasons explained in the opening brief, the lower federal court and out-of-state cases cited by the State were not. (Appellee's

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[2]These include: (1) the juvenile defendant's chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant's family and home environment; (3) the juvenile defendant's degree of participation and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys. *Holman*, 2017 IL 120655, ¶ 46, *citing Miller*, 567 U.S. at 477-78.

Open. Br. 20-21)

As such, the State's position should be rejected and this Court should hold that the eighth amendment mandates that a sentencer take into account an intellectually disabled adult's unique characteristics before sentencing him to die in prison. As the appellate court noted, *Atkins* articulated that those attendant characteristics include, but are not limited to, an intellectually disabled person's diminished capacity (1) to understand and process information, (2) to communicate, (3) to abstract from mistakes and learn from experience, (4) to engage in logical reasoning, (5) to control impulses, and (6) to understand others' actions and reactions, so as to be more susceptible to manipulation and pressure. *Coty*, 2018 IL App (1st) 162383, *citing Atkins*, 536 U.S. at 318. These factors should be considered along with the factors enumerated by this Court in *Holman* that apply in the juvenile context, where juveniles and intellectually disabled adults share the same mitigating characteristics and are therefore entitled to the same procedural safeguards under the eighth amendment of the Federal constitution.

2. A rule requiring sentencers to consider an offender's intellectual disability and its attendant characteristics before imposing a life sentence should be applied to discretionary *de facto* life sentences.

The State maintains that a rule requiring a sentencing court to consider an offender's intellectual disability and its attendant characteristics before imposing a life sentence leads to "unreasonable consequences" because "the new rule would prohibit applying the statutory minimum of 20 years in prison to a 45-year-old intellectually disabled person convicted of first degree murder, and the six-year minimum for a 60-year-old convicted of a class X felony." (St. Response Br. 16-17) For the reasons discussed in the opening brief, this argument is meritless. (Appellee's

Open. Br. 24-28) Once again, Coty is not asking this Court to foreclose a sentencer's ability to sentence an intellectually disabled offender to life in prison, but only to require that a sentencer take into account how intellectually disabled individuals are different, and how those differences counsel against sentencing them to die in prison. (Appellee's Open. Br. 25-26) To this end, the 45-year-old and 60-year-old offenders hypothesized by the State could very reasonably be found to be beyond the possibility of rehabilitation and therefore receive *de facto* life sentences; as long as the sentencing judge considers their intellectual disabilities before imposing life terms, their sentences would pass constitutional muster. This Court should therefore apply *Miller* to the discretionary *de facto* life sentence here.

As its final substantive point, the State, in reliance on *Holman,* argues that Coty's sentence is constitutional because the "cold record" shows that "the trial court considered" evidence of Coty's intellectual disability and its attendant characteristics before sentencing him to die in prison. (St. Response Br. 17), citing *Holman*, 2017 IL 120655, ¶47. This case is readily distinguishable from *Holman* so this argument should be rejected.

In *Holman*, the juvenile-defendant admitted to participating to eight other murders in addition to the murder of which he was convicted. *Id.* at ¶¶5-6. The trial court sentenced him to natural life in prison. *Id.* at ¶17. The juvenile-defendant challenged his sentence under *Miller* in a *pro se* successive postconviction petition. *Id.* at ¶20. This Court held that the judge's conclusion was supported by the record, which established that the trial court considered each of the *Miller* factors before sentencing the juvenile-defendant to life in prison. *Id.* at ¶48.

Specifically, the trial court knew the defendant was 17 at the time of the

offense, and the PSI and the psychological reports provided some insight into his mentality but did not depict him as immature, impetuous, or unaware of risks. *Id.* The PSI included information about the defendant's family. *Id.* The evidence at trial showed that the defendant was intimately involved with the offense. *Id.* The PSI alerted the trial court to the defendant's susceptibility to peer pressure, as well as his low intelligence and possible brain damage from a head injury, but there was nothing presented at trial or sentencing to indicate that the defendant was incompetent and could not communicate with police officers or prosecutors or assist his own attorney. *Holman*, 2017 IL 120655, ¶48. A doctor's report spoke positively about the defendant's verbal intelligence. *Id.* And as to the defendant's prospects for rehabilitation, the PSI included a statement from the probation officer, who found "no predilection for rehabilitation," in light of the defendant's "history of senseless criminal acts of mortal violence toward others and lack of remorse for his victims." *Id.* The trial court presided over the case from pretrial motion hearings through the trial and the sentencing hearing, and the court concluded that the defendant's conduct placed him beyond rehabilitation. *Id.* at ¶50.

In contrast, the re-sentencing court in this case was not the court that presided over the pre-trial fitness proceedings, or the trial, or the original sentencing hearing – the trial judge who did preside over these proceedings stated that he did not believe this case warranted a life sentence. (Tr. R. CC-9) Regardless, nothing in the "cold record" supports a finding that Coty's sentence is constitutional. (See *infra*, 15-17) At the outset of the re-sentencing hearing, the trial court indicated that he had been "tendered a large volume of materials. . . that included, among other things, the transcript of the original trial, and the sentencing that occurred,

including the testimony of a Doctor who testified regarding William's intellectual difficulties or disabilities. I am taking all that into account." (R. V2)

The prosecutor initiated her argument in aggravation by noting that she had spoken to the victim's mother "a couple of months ago to advise her of the Appellate Court opinion and that [Coty] would be resentenced," and she was "very troubled by the fact that [Coty] had to be resentenced." (R. V3-4) Neither the victim nor her mother appeared or testified at the re-sentencing hearing, but the prosecutor argued that this offense, while it was only a single brief act of digital penetration, "was very disturbing and emotionally upsetting both for the victim and especially for the victim's family, her mom in particular." (R. V4-5) The prosecutor asserted that the mother "felt that a significant number of years is still appropriate," and the prosecutor likewise argued "[a] significant number of years is appropriate." (R. V5) Immediately before sentencing Coty to 50 years in prison – a sentence that is far greater than the "significant number of years" recommended by the State – the re-sentencing court did not mention Coty's intellectual disability, but instead emphasized the prosecutor's argument that the victim's mother "still takes this case seriously." (R. V7-8)

According to the State, the trial court adequately considered all the attendant circumstances of Coty's intellectual disability because the record contained evidence of this offense, his criminal history, and that Coty's "previous behavior reflect[ed] a lack of social conformity." (St. Response Br. 18), citing (C. 117) This argument must be rejected. The re-sentencing court made no more than a passing reference to Coty's intellectually disability, and the record fails to show that the court gave any meaningful consideration to the sentencing implications of his disability. For

the reasons explained in the opening brief, the re-sentencing hearing that occurred in this case was nearly identical to the sentencing hearing that occurred in *Buffer*, which this Court deemed insufficient and in violation of the eighth amendment. 2019 IL 122327, ¶¶5, 42. (Appellee's Open. Br. 38-39) As in *Buffer*, this Court should remand for re-sentencing.

Finally, contrary to the State's argument, Coty's eighth amendment claim is not forfeited. (St. Response Br. 18)(citing *People v. Hillier*, 237 Ill. 2d 539, 547-49 (2010)) Coty is arguing that under *Miller*, a process that allows the imposition of a life sentence on an offender without first considering his intellectual disability and its attendant characteristics is forbidden under the eighth amendment. (Appellee's Open. Br. 24) This Court's *Miller* jurisprudence establishes that this Court can reach the merits of Coty's eighth amendment claim, even though it was raised for the first time on appeal. *Holman*, 2017 IL 120655, ¶32. The claim here does not require factual development, because all of the facts and circumstances necessary to decide Coty's claim – that he is intellectually disabled and that his sentencing hearing did not comply with the eighth amendment – are already in the record. *People v. Davis*, 2014 IL 115595, ¶32. Thus, if this Court agrees that the eighth amendment requires a sentencer to consider an offender's intellectual disability before imposing a life sentence, this Court can hold that Coty's sentence is unconstitutional. *Id.* at ¶26, *citing People v. Brown*, 225 Ill. 2d 188, 203 (2007) (a sentence that violates the constitution is void from its inception, and may be attacked at any time and in any court, either directly or collaterally).

Furthermore, there is no merit to the State's argument that this Court should deny relief because "[t]he United States Supreme Court is tasked with adopting

new categorical rules under the eighth amendment, for it is the nationwide consensus and the independent judgment of that Court that determines whether a particular punishment should be prohibited in the entire country." (St. Response Br. 19), citing *Minnesota v. Clover Leaave Creamery Co.*, 449 U.S. 456, 462 n.6 (1981); *Oregan v. Haas*, 420 U.S. 714, 719 (1975); *In re Karas' Estate*, 61 Ill. 2d 40, 53 (1975); *Harris*, 2018 IL 121932, ¶¶56-61; *Holman*, 2017 IL 120655, ¶51.

First, as already established, Coty is not asking this Court to adopt a categorical rule under the eighth amendment. Second, the United States Supreme Court has never addressed this issue, so this Court is not "impos[ing] greater restrictions" than that Court. (St. Response Br. 19) Indeed, "the source of a 'new rule' is the Constitution itself, not any judicial power to create new rules of law." *Danforth v. Minnesota*, 552 U.S. 264, 271 (2008) (States are free to give its citizens the benefit of Supreme Court rules in any fashion that does not offend federal law.) Third, eighth amendment jurisprudence under *Miller* has continued to evolve in this Court notwithstanding the Supreme Court's silence on certain questions, and it can and should continue to evolve in the context of this case. *See e.g., Holman*, 2017 IL 120655, ¶40 (holding that *Miller* applies to discretionary sentences of life without parole for juvenile defendants); *Reyes*, 2016 IL 119271, ¶9 (holding that sentencing a juvenile offender to a mandatory term of years that is the functional equivalent of life without the possibility of parole constitutes cruel and unusual punishment in violation of the eighth amendment); *Buffer*, 2019 IL 122327, ¶40 (holding that in determining when a juvenile defendant's prison term is long enough to be considered *de facto* life without parole, the line is 40 years).

For these reasons, Coty asks this Court to hold that eighth amendment

precedent dictates that minors and adults with intellectual disabilities should be treated similarly, so that under our community's evolving standards of decency, the prohibition against the imposition of discretionary *de facto* life sentences – without the procedural safeguards of *Miller* – should be extended to intellectually disabled persons under both the eighth amendment of the federal Constitution and the penalties provision of our Constitution. Because the trial court did not consider Coty's intellectual disability and its attendant characteristics, or the specific circumstances of this offense before sentencing him to life in prison, Coty's sentence is unconstitutional.

II. William Coty's 50-year sentence is excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law and manifestly disproportionate to the nature of the offense.

The State claims that "the record shows that before sentencing [Coty] the trial court *did* consider [Coty's] disability, the appellate court's prior decision, and the circumstances of his offense." (St. Response Br. 2) (emphasis in original) But as discussed, *supra* at 11-13, the re-sentencing court's passing references to the trial record, the appellate court's order vacating Coty's mandatory life sentence, and the parties' re-sentencing arguments do not reflect that the sentencing court gave adequate weight to Coty's intellectual disability. (See *supra* at 11-12; Appellee's Open. Br. 43) Indeed, there is no indication in this record that the re-sentencing court gave any meaningful consideration to Coty's disability and background.

The State's attempt to portray Coty as a predator should be rejected. (St. Response Br. 4-5) To briefly review his background, his mother died in childbirth and he was raised by his sister and by his aunt, who also passed away while Coty

was growing up. (Tr. C. 79) Coty has been a "loner" his entire life. (Tr. C. 79) He had one friend growing up – a girl with whom he attended special education school as a child. (Tr. C. 79) As an adult, he is unable to read, write, or perform basic household tasks. (Tr. C. 80) He does not know how to count change when he purchases items at the store. (Tr. C. 80) He has to be reminded to shower and keep up with his personal hygiene. (Tr. C. 80) Before his incarceration, he would spend most of his time in the house watching cartoons or walking around the streets, sometimes with his uncle who was a fruit vendor. (Tr. C. 80)

Coty is small in stature and has a childlike demeanor. (Tr. C. 80) He can be easily mistaken as a child with adults tending to want to treat him like one. (Tr. C. 82) When he met the forensic psychologist for a pre-trial fitness exam, he looked disheveled and his grooming was marginal. (Tr. C. 80) He had poor dental hygiene, his hair was uncombed, and he looked older than his age. (Tr. C. 80) He was noticeably shaking, and when asked why, he said he always had that which was why his nickname was "Shaky." (Tr. C. 80) Coty has a very rudimentary understanding of the criminal justice system and is easily exploited because of his low mental ability. (Tr. C. 82)

Contrary to the State's argument, the record does not confirm that the re-sentencing court considered any of this mitigating evidence. (St. Response Br. 3-4); 730 ILCS 5/5-5-3.1(a)(13) (West 2004) (A defendant's intellectually disability is specifically enumerated as a mitigating factor) One evaluating psychologist recommended that instead of prison, Coty should be referred to a secure residential facility because he has such a low level of adaptive functioning compared to other intellectually disabled individuals due to the fact that he has either been in a

prison environment or cared for by family members for much of his adult life. (Tr. C. 82) Because the mother of the victim asked for a significant number of years of incarceration, the re-sentencing court sentenced him to die in prison. (Tr. C. 82)

The State asserts that "[Coty's] attempts to minimize the seriousness of his offense are unavailing." (St. Response Br. 4) Coty, however, in no way wishes to minimizes the seriousness of the offense. But as the first district appellate court observed, the "offense [albeit serious] * * * included a single, brief act of [digital] penetration that did not result in any physical injury to the victim;" the encounter "was neither orchestrated nor preplanned but 'rather was seemingly impulsive;'" and Coty "expressed remorse over what he had done." *Coty*, 2018 IL App (1st) 162383, ¶41.

The State notes that he committed this offense after he had been convicted of sexually assaulting a nine-year-old girl. (St. Response Br. 5) That offense occurred over 16 years before the instant offense, and Coty received the minimum six-year sentence. (Tr. C. 140) His sister reported that everyone knew after he was released from prison for that offense that he was not supposed to be around children. (Tr. C. 80) Coty relates poorly to adults although he tries very hard to "fit in," and relies on others for his well-being in all aspects of his life. (Tr. C. 81) Nevertheless, the victim's grandfather allowed his son and grandchildren to move into the basement where Coty was living. (Tr. C. 80) Coty's room in the basement was separated by curtains, not doors, and he was not given any privacy as the children would wander throughout the basement. (Tr. C. 80) Coty takes responsibility for his actions, but the sentence nevertheless fails to reflect his mitigated culpability

and the circumstances of this offense.

Likewise, Coty does not dispute that "[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of decent people." (St. Response Br. 4), quoting *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002); *see also People v. Huddleston*, 212 Ill. 2d 107, 132-40, 146-48 (2004); *People v. Peters*, 2011 IL App (1st) 092839, ¶53. The record here suggest that William Coty is a decent person, just one with a severe intellectual disability. In light of his disability, his background, and the circumstances of this offense, the re-sentencing court's imposition of an extended term, 50-year sentence that guarantees Coty will die in prison was an abuse of discretion. Coty therefore respectfully asks this Court to reduce the sentence to a term of years that adequately reflects his diminished culpability and comports with the circumstances of the offense. (Appellee's Open. Br. 40-46)

CONCLUSION

For the foregoing reasons, William Coty, defendant-appellee, respectfully requests that this Court vacate his sentence as unconstitutional or excessive and reduce his sentence, or in the alternative, remand for resentencing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 19 pages.

/s/Daniel T. Mallon
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No. 123972

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- WILLIAM COTY Defendant-Appellee	)	Appeal from the Appellate Court of Illinois, No. 1-16-2383. There on appeal from the Circuit Court of Cook County, Illinois , No. 04 CR 30062. Honorable Nicholas Ford, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 13, 2020, the Cross Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Cross Reply Brief to the Clerk of the above Court.

/s/ Marquita S. Harrison
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